

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

DESIMONE HOSPITALITY SERVICES, LLC,

Plaintiff,

v.

Lead

Civil Action No.: 2:14-14845
(A.P. 2:14-2036)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

SHAPE SHOP, INC.
and THELMA FAYS, LLC
d/b/a THELMA FAYS CAFE,

Plaintiffs,

v.

Civil Action No. 2:14-14846
(A.P. No. 2:14-2008)

FREEDOM INDUSTRIES, INC.
and AMERICAN WATER WORKS
SERVICE COMPANY, INC.
and WEST VIRGINIA AMERICAN
WATER COMPANY,

Defendants.

NOEL HARDMAN and BRIAN VANNOY and
DIANA JOHNSON and COURTNEY HARPER and
KATHRYN CASTO and ROBERT STRINGER and
KIMBERLY LAPSLEY and TIMOTHY WILBURN and
MEAGAN KRASYK and HEIDI STRICKLEN and
MARK STRICKLEN and SONJA MARSHALL and
MARLENE DIAL and MARGARET SUE ZALENSKI and
JOSEPH ZALENSKI and JAMES PARSONS and
JANET ATKINS and KEITH ROEHL and
LISA ROEHL and CARL CHADBAND and
KRISTI CHADBAND and WILLIAM LIPSCOMB and
DEBRA LIPSCOMB and APRIL HARRIS and
ARMELIA PANNELL and LENOX CHANDLER and

JOHNETTE JASPER and LATAUSHA TAYLOR and
KEVIN STUBBLEFIELD and MARTHA STUBBLEFIELD and
TAMMY PARSONS,

Plaintiffs,

v.

Civil Action No. 2:14-14847
(A.P. No. 2:14-2009)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendants.

MADDIE P. FIELDS,

Plaintiff,

v.

Civil Action No. 2:14-14848
(A.P. No. 2:14-2010)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendants.

RODOCO, INC. d/b/a DONUT CONNECTION, and
ALMOST HEAVEN BURGERS, INC.
d/b/a CHECKERS DRIVE-IN RESTAURANT
and HARGIS UNLIMITED, LLC
d/b/a KANAWHA CITY COIN LAUNDRY
and MELANIE MARTIN
and MEGAN SPEARS
and SYRRA SALON LLC
and PAUL KIRK
d/b/a BARE KNUCKLES TATTOO SHOP,

Plaintiffs,

v.

Civil Action No. 2:14-14849
(A.P. No. 2:14-2011)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendants.

EG & K INC.
and RUSTY A. CARPENTER,

Plaintiffs,

v.

Civil Action No. 2:14-14850
(A.P. No. 2:14-2012)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA-AMERICAN WATER COMPANY, and
JOHN DOE CORPORATION 1 THROUGH 5
and JOHN DOE,

Defendants.

SUSAN K. DYER
individually and on behalf of
all others similar situated,

Plaintiff,

v.

Civil Action No. 2:14-14851
(A.P. No. 2:14-2013)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendants.

5 CORNERS CAFÉ, LLC and
THE VINTAGE BARBER SHOP and
JUSTIN A. AMOS,

Plaintiffs,

v.

Civil Action No. 2:14-14852
(A.P. No. 2:14-2014)

FREEDOM INDUSTRIES, INC.,

Defendant.

CANDICE HENRY MAHOOD
and CARRIE ANN SAMUELS
and KATHERINE ELLA GRUBB
and KELLI OLDHAM
and ELIZABETH GRUBB,

Plaintiffs,

v.

Civil Action No. 2:14-14853
(A.P. No. 2:14-2015)

FREEDOM INDUSTRIES, INC. and
DENNIS FARRELL and
WEST VIRGINIA AMERICAN WATER COMPANY
and OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR
FREEDOM INDUSTRIES, INC.,

Defendants.

VON HARVEY,

Plaintiff,

v.

Civil Action No. 2:14-14854
(A.P. No. 2:14-2016)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA AMERICAN WATER and
AMERICAN WATER WORKS SERVICE COMPANY, INC. and
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
FREEDOM INDUSTRIES, INC.,

Defendants.

PRAY CONSTRUCTION COMPANY and
A-LEX, INC. and
GRUMPY'S GRILLE, LLC and
TWOD INC.,

Plaintiffs,

v.

Civil Action No. 2:14-14855
(A.P. No. 2:14-2017)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA AMERICAN WATER
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
FREEDOM INDUSTRIES, INC.,

Defendants.

JOE FAZIO'S RESTAURANT, INC.,

Plaintiff,

v.

Civil Action No. 2:14-14856
(A.P. No. 2:14-2018)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA AMERICAN WATER,

Defendants.

LAURA GANDEE,
individual and as representative
of others similarly situated,

Plaintiff,

v.

Civil Action No. 2:14-14857
(A.P. No. 2:14-2019)

FREEDOM INDUSTRIES, INC.,

Defendant.

JOHN NELSON and
WANDA TRIBBIE,
an individual and as representative
of and along with "other stylists
or barbers, located in Kanawha,
Putnam, Boone, Jackson, Cabell, Clay
Lincoln, Logan and Roane Counties
similarly situated,

Plaintiffs,

v.

Civil Action No. 2:14-14858
(A.P. No. 2:14-2022)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA AMERICAN WATER COMPANY,

Defendants.

KUPPEL LLC
d/b/a DREAM TANK
d/b/a CAPITOL DOME BAR & GRILLE
and REEMA FAMILY HAIRSTYLING,

Plaintiffs,

v.

Civil Action No. 2:14-14859
(A.P. No. 2:14-2023)

FREEDOM INDUSTRIES, INC.
and WEST VIRGINIA AMERICAN WATER,

Defendants.

SHANNON LARWA and
SHANNON'S SUITE SALON, LLC
d/b/a SHANNON'S SUITE SALON and
JENNIFER SCHOOLCRAFT and INNOV8 SALON, LLC
d/b/a INNOV8 SALON, LLC and
ALEX MORGADO and MORGADO DESIGN, LLC
d/b/a MORGADO DESIGN and JOHN PATRICK BURGESS, DDS and
MADIGAN RAE BURGESS, DDS, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

Civil Action No. 2:14-14860
(A.P. No. 2:14-2024)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA AMERICAN WATER COMPANY,

Defendants.

CORNELLISUS D. CHRISTIAN,

Plaintiff,

v.

Civil Action No. 2:14-14861
(A.P. No. 2:14-2025)

FREEDOM INDUSTRIES, INC.,

Defendant.

JOHN LEVIN and
LOUISA LEVIN
on behalf of themselves and
all others situated,

Plaintiffs,

v.

Civil Action No. 2:14-14862
(A.P. No. 2:14-2026)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA AMERICAN WATER COMPANY,

Defendants.

GRAZIANO INVESTMENTS, INC. and
CATERING UNLIMITED, INC. and
SHELTON'S OF KANAWHA CITY, LLC and
ERIC BOOTH individually and on behalf of
others similarly situated,

Plaintiffs,

v.

Civil Action No. 2:14-14863
(A.P. No. 2:14-2027)

FREEDOM INDUSTRIES, INC.,

Defendant.

HAIR WE ARE, INC.,

Plaintiff,

v.

Civil Action No. 2:14-14864
(A.P. No. 2:14-2029)

FREEDOM INDUSTRIES, INC. and
WEST VIRGINIA AMERICAN WATER,

Defendants.

JUNE GURSKI
and JOHN DOE BUSINESS OWNER,

Plaintiffs,

v.

Civil Action No. 2:14-14865
(A.P. No. 2:14-2030)

FREEDOM INDUSTRIES, INC.
and WEST VIRGINIA-AMERICAN
WATER COMPANY
and JOHN DOE CORPORATION
1 THROUGH 5
and JOHN DOE,

Defendants.

LITTLE BO PEEP DAYCARE and
KIDS R US DAYCARE and
PAULINE'S HOUSE OF CURLS and
JANE GURSKI and
PAULA MILLER, individually and on behalf
of others similarly situated,

Plaintiffs,

v.

Civil Action No.: 2:14-14866
(A.P. 2:14-2031)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

BOBBY L. TUCKER and
REBA TUCKER, his wife,

Plaintiffs,

v.

Civil Action No.: 2:14-14867
(A.P. 2:14-2032)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

MAID IN THE USA, INC., doing business as
Maid to Perfection of Charleston,

Plaintiff,

v.

Civil Action No.: 2:14-14868
(A.P. 2:14-2030)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

OTIS TUCKER and
DANETTE TUCKER, his wife,

Plaintiffs,

v.

Civil Action No.: 2:14-14869
(A.P. 2:14-2034)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

THE TOWN OF BUFFALO,

Plaintiff,

v.

Civil Action No.: 2:14-14870
(A.P. 2:14-2035)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

RONNIE ALLEN BRISCOE and
DENISE EVON BRISCOE,

Plaintiffs,

v.

Civil Action No.: 2:14-14871
(A.P. 2:14-2037)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

DEBORAH J. HEDRICK,

Plaintiff,

v.

Civil Action No.: 2:14-14872
(A.P. 2:14-2038)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

WILLIAM DESIMONE, JR. and
DEANNA L. DESIMONE,

Plaintiffs,

v.

Civil Action No.: 2:14-14873
(A.P. 2:14-2039)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

LARRY NEWHOUSE and
BRENDA NEWHOUSE,

Plaintiffs,

v.

Civil Action No.: 2:14-14874
(A.P. 2:14-2040)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

WELLINGTON'S, INC., a West Virginia corporation,
doing business as Wellington's Cafe' & Catering,

Plaintiff,

v.

Civil Action No.: 2:14-14875
(A.P. 2:14-2041)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

DARRELL L. MOORE and
TAMMY MOORE, his wife,

Plaintiffs,

v.

Civil Action No.: 2:14-14876
(A.P. 2:14-2042)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

GARY N. DEWEES and
CONNIE L. DEWEES,

Plaintiffs,

v.

Civil Action No.: 2:14-14877
(A.P. 2:14-2043)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

GERALDINE JOHNS,

Plaintiff,

v.

Civil Action No.: 2:14-14878
(A.P. 2:14-2044)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

CHRISTOPHER M. DEWEESE and
LORI L. DEWEESE,

Plaintiffs,

v.

Civil Action No.: 2:14-14879
(A.P. 2:14-2045)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

CHRISTOPHER JORDAN,

Plaintiff,

v.

Civil Action No.: 2:14-14880
(A.P. 2:14-2046)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

SANDYLOU & TIFFANY 2, LLC, a West Virginia corporation,
doing business as Angaleno's Pizza,

Plaintiff,

v.

Civil Action No.: 2:14-14881
(A.P. 2:14-2047)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

MARGIE JORDAN,

Plaintiff,

v.

Civil Action No.: 2:14-14882
(A.P. 2:14-2048)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

NICK KONNOVITCH,

Plaintiff,

v.

Civil Action No.: 2:14-14883
(A.P. 2:14-2049)

WEST VIRGINIA-AMERICAN WATER COMPANY and
FREEDOM INDUSTRIES, INC.,

Defendants.

MISTY HARRIS,

Plaintiff,

v.

Civil Action No.: 2:14-14884
(A.P. 2:14-2050)

WEST VIRGINIA-AMERICAN WATER COMPANY,

Defendant.

MARY BARBER

Plaintiff

v.

Civil Action No.: 2:14-14885
(A.P. No. 2:14-2051)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

WARREN SHAMBLIN and
JESSICA SHAMBLIN,

Plaintiffs

v.

Civil Action No.: 2:14-14886
(A.P. No. 2:14-2052)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

BUFFALO VOLUNTEER FIRE DEPARTMENT, INC.,

Plaintiff

v.

**Civil Action No.: 2:14-14887
(A.P. No. 2:14-2053)**

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

**TRENT FORBIS and
LESLI FORBIS**

Plaintiffs

v.

**Civil Action No.: 2:14-14888
(A.P. No. 2:14-2054)**

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

**EJ&K ENTERPRISES, LLC and
SOUTH HILLS MARKET & CAFÉ, LLC**

Plaintiffs

v.

**Civil Action No.: 2:14-14889
(A.P. No. 2:14-2055)**

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

JASON BROGAN

Plaintiff

v.

**Civil Action No.: 2:14-14890
(A.P. No. 2:14-2056)**

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

AM & GH LLC,
doing business as
Grano, and L AND G FOODS, INC. and
SAHARA CATERING & RESTAURANT, INC., and
MADELINES CAFÉ INC., and
MOUND CLEANERS, INC., and
NEXUS ATHLETIC CLUBS, INC., and
CITY FITNESS, INC., and
NAUTILUS FITNESS CENTER, INC., and
KINETIX FITNESS LLC, and
PAUL WALTON, JR., and
TABETHA PEIROS and
BART A. ROBERTS and
KRISTI MADDOX,
and all others similarly situated,

Plaintiffs

v.

Civil Action No.: 2:14-14891
(A.P. No. 2:14-2057)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

FALBO & MONDAY, PLLC,
and similarly situated,

Plaintiffs

v.

Civil Action No.: 2:14-14892
(A.P. No. 2:14-2058)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

J. E., individually
and on behalf of their minor child,
K.E.,

Plaintiff

v.

Civil Action No.: 2:14-14893
(A.P. No. 2:14-2059)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

MELISSA JEAN MEDLEY,

Plaintiff

v.

Civil Action No.: 2:14-14894
(A.P. No. 2:14-2060)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

RICHARD GRAVELY,

Plaintiff

v.

Civil Action No.: 2:14-14895
(A.P. No. 2:14-2061)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

SCOTT MILLER and
BAR 101, LLC, and
ICHIBAN, individually and on
behalf of all others similarly situated,

Plaintiffs

v.

Civil Action No.: 2:14-14896
(A.P. No. 2:14-2062)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

MARK STRICKLAND,

Plaintiff

v.

Civil Action No.: 2:14-14897
(A.P. No. 2:14-2063)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

DANIEL CLEVE STEWART,

Plaintiff

v.

Civil Action No.: 2:14-14898
(A.P. No. 2:14-2064)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

KRISTY ORD and SHERRI VANCE and
CAMBREE VANCE and ANN PERRINE and
SANDRA BOWLES and JENNIFER TOTTEN and
WILLIAM G. JONES,

Plaintiffs

v.

Civil Action No.: 2:14-14899
(A.P. No. 2:14-2065)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

ADELPHIA, INC.,
on behalf of themselves and
all others similarly situated,
doing business as
Adelphia Sports Bar & Grill,
doing business as
Capitol Car Wash,
doing business as
Spyros Parking Lots,

Plaintiffs

v.

Civil Action No.: 2:14-14900
(A.P. No. 2:14-2067)

WEST VIRGINIA AMERICAN WATER COMPANY

Defendant

KANAWHA GOURMET SANDWICHES, LLC,
individually and on behalf of
all others similarly situated

Plaintiff

v.

Civil Action No.: 2:14-14901
(A.P. No. 2:14-2028)

FREEDOM INDUSTRIES, INC., and
WEST VIRGINIA AMERICAN WATER and
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR FREEDOM INDUSTRIES, INC.,

Defendants

MEMORANDUM OPINION AND ORDER

Pending are certain motions to remand filed on various dates in each of the above-styled adversary proceedings except for Christian v. Freedom Industries, Inc., 2:14-14861. These motions are subject to a briefing order entered in the bankruptcy court on March 27, 2014.

The assignment of these formerly miscellaneous actions was entered April 10, 2014. On April 16, 2014, the court withdrew the references of the cases to the bankruptcy court. The court presently has under consideration certain administrative steps to achieve the just, speedy, and efficient resolution of the litigation. The purpose of this memorandum opinion and order is to address a limited consolidation of the cases pending the further order of the court.

I.

Freedom is a West Virginia corporation engaged primarily in the production of specialty chemicals for the mining, steel, and cement industries. It is also a leading supplier of freeze conditioning agents, dust control palliatives, flotation reagents, water treatment polymers, and other specialty chemicals. Freedom operates two production facilities in West Virginia, namely, in Nitro ("Nitro Facility") and Charleston ("Charleston Facility").

On January 9, 2014, an apparent leak occurred in one of Freedom's storage tanks located at the Charleston Facility. On January 17, 2014 ("Petition Date"), Freedom petitioned in this district for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101.

At the time of filing of the omnibus motions to withdraw reference, 62 civil actions had been instituted against various defendants relating to the incident. Freedom contends it is foreseeable that, in those cases where it is not named, parties will assert indemnity or contribution claims against it at a later time. On February 21 and 22, 2014, Freedom removed to the bankruptcy court those state actions in which it was named a defendant. On February 24, 2014, West Virginia American

Water Company ("WVAWC") removed to this court as "related-to" cases each of the state actions in which Freedom was not named.¹

The factual allegations in all of the cases arise from the alleged leak. According to Freedom, the claims vary and rely on a range of legal and equitable theories. No one disputes, however, that the plaintiffs assert one or more of four categories of claims as follows: (a) physical personal injury tort claims, such as bodily injury, emotional distress and/or requests for medical monitoring to detect bodily injury in the future; (b) non-physical personal injury tort claims, such as annoyance, loss of enjoyment, nuisance and inconvenience; (c) property-related claims, such as trespass, property damage, and loss of use of property; and (d) financial claims, such as lost income or loss-of-business claims.

¹ Two cases were instituted in the district court invoking federal question jurisdiction. Two more were removed and invoke diversity jurisdiction under the Class Action Fairness Act ("CAFA") and 28 U.S.C. § 1332(d)(2). The remaining actions were instituted in various state circuit courts and removed as adversary proceedings pursuant to 28 U.S.C. §§ 1334 and 1452(a).

II.

A. The Governing Standard

Federal Rule of Civil Procedure 42(a) provides as follows:

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. Proc. 42(a).

Our court of appeals affords broad discretion to district courts in assessing the desirability of consolidation, recognizing the superiority of the trial court in determining how best to structure similar pieces of litigation. See A/S J. Ludwig Mowinckles Rederi v. Tidewater Const. Co., 559 F.2d 928, 933 (4th Cir. 1977) ("District courts have broad discretion under F.R.Civ.P. 42(a) to consolidate causes pending in the same district."). It has, however, provided guidelines for exercising that discretion. See Arnold v. Eastern Air Lines, Inc., 681 F.2d 186, 193 (4th Cir. 1982). Those guidelines essentially balance the specific risks of prejudice and possible

confusion with the potential for inconsistent adjudications of common factual and legal issues and the burden on available judicial resources posed by multiple lawsuits. Id. at 193. Efficiency from a time and cost perspective are also considered. Id. .

The risk of inconsistent adjudications, substantial expense to the parties, and inefficient use of court resources markedly increases here if the court declines consolidation at least to some extent. Consolidation for purposes of adjudicating the motions for remand, with coordinated and consolidated briefing, would avoid each of those undesirable outcomes and diminish the chances of confusion and prejudice that might otherwise result.

For example, an individual consideration of dozens of sets of remand briefs, with differing arguments by the parties, might lead to remand in some cases but not others depending upon the precise grounds raised by particular plaintiffs seeking a return to state court. The length of time required to resolve each of these actions separately, and the expenses associated therewith, also militate strongly in favor of consolidation as to the remand motions.

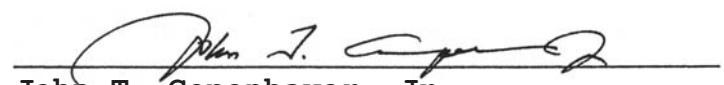
Based upon the foregoing, a limited consolidation is appropriate. Additionally, other initial procedural devices are in order at this time. The court, accordingly, ORDERS as follows:

1. That the above-styled civil actions be, and hereby are, consolidated for purposes of briefing and resolving the matter of remand;
2. That Desimone Hospitality Services v. West Virginia American Water Company, civil action 2:14-14845, be and hereby is, designated as the lead case, with all further filings to be captioned and docketed in that case pending the further order of the court;
3. That counsel for the parties be, and hereby are, directed to designate by agreement no more than three of their number from each the plaintiff and the defendant sides to serve as liaison counsel for purposes of the consultations required below and to notice the designated lawyers on the record on or before May 1, 2014; and
4. That, in lieu of the briefing order entered in the bankruptcy court on March 27, 2014, liaison counsel be, and hereby are, directed to meet and confer no

later than May 8, 2014, for purposes of arriving at a proposed stipulated briefing schedule designed to result in a single set of omnibus briefing that addresses all of the arguments for remand found in the pending remand motions.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record.

DATED: April 18, 2014


John T. Copenhaver, Jr.
United States District Judge